IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 17TH AUGUST 2007 / 26TH SRAVANA 1929

WP(C).No. 22758 of 2006(H)

PETITIONER:

K.SIVADAS,
SENIOR TECHNICAL OFFICER, ANERT,
PROJECT OFFICER IN CHARGE, I.R.E.P. PROJECT OFFICE (ANERT), D.P.O.ROAD, UPHILL, MALAPPURAM.

BY ADV. SRI.V.RAJENDRAN

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, POWER DEPARTMENT, GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.

2. AGENCY FOR NON-CONVENTIONAL ENERGY AND RURAL TECHNOLOGY (ANERT), PATTOM P.O., THIRUVANANTHAPURAM-4, REP. BY ITS DIRECTOR.

3. THE DIRECTOR, ANERT, P.O.PATTOM, THIRUVANANTHAPURAM-4.

BY ADV. SRI.V.G.ARUN, SC FOR ANERT
GOVERNMENT PLEADER SRI.BIJOY CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO.22758/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF THE ORDER DATED 31.10.2005 OF THE 3RD RESPONDENT.

EXT.P2: TRUE COPY OF THE LETTER DATED 28.1.2006 OF THE 3RD RESPONDENT TO THE 1ST RESPONDENT.

EXT.P3: TRUE COPY OF THE LETTER DATED 16.8.2006 OF THE 3RD RESPONDENT TO THE PETITIONER

EXT.P4: TRUE COPY OF THE SERVICE RULES OF THE ANERT PUBLISHED BY THE 2ND RESPONDENT.

EXT.P5: TRUE COPY OF THE ORDER DATED 12.8.2003 OF THE 1ST RESPONDENT.

EXT.P6: TRUE COPY OF THE LETTER DATED 19.5.2007 OF THE 3RD RESPONDENT TO THE PETITIONER.

EXHIBITS OF R2 AND R3

EXT.R3(a): TRUE COPY OF THE ANERT SERVICE RULES.

EXT.R3(b): TRUE COPY OF THE SERVICE RULES OF KSCSTE.

EXT.R3(c): TRUE COPY OF THE MINUTES OF THE 5TH MEETING OF THE ANERT DATED 8.9.2005.

EXT.R3(d): TRUE COPY OF THE LETTER NO.800/PS2/06/PD DATED 13.2.2006.

//TRUE COPY//

ANTONY DOMINIC, J.
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W.P.(C) NO. 22758 OF 2006
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Dated this the 17th day of August, 2007

J U D G M E N T

The writ petitioner entered service of the second respondent as Senior Technical Officer. According to him, as per Ext.P4, the age of superannuation of the Scientific or Technical Staff shall be 60 years and that of Administrative Staff 58 years. On 16/1/03, the 2nd respondent was amalgamated with Kerala State Council for Science Technology and Environment, (hereinafter referred to as Council for short). After amalgamation, on 19/6/03, the Council framed its own rules and Ext.R3(b) is a copy of the same. In terms of Ext.R3(b), an employee in Administrative/Technical category shall retire from service of the Council on the afternoon of the last day of the month in which he/she attains 58 years of age and for scientific staff, the retirement age is 60 years. On 12/8/03, the

second respondent was detached from the Council. Thereafter on 14/7/2004, it was re-registered as a Society and started functioning as such. On such re-registration, based on Ext.R3(c) resolution dated 8/9/05, the 2nd respondent issued an order clarifying that those rules and orders, which were in force at the time of re-registration on 14/7/04 shall continue in force until specifically ordered otherwise.

2. While the position continued as above, the petitioner applied for leave without allowance for four months and the request of the petitioner was recommended by the Director to Government for issuing necessary no objection certificate as per Ext.P2. In Ext.P2, it is stated that the age of superannuation of technical staff in the second respondent is 60 years as per its Service Rules and that the date of retirement of the petitioner in 31/8/08. Ext.R3(d) produced in the counter is the reply to Ext.P2,

wherein the Government has informed the second respondent that as per the rules applicable to the second respondent, the age of superannuation of scientific staff shall be 60 years and that for the technical and administrative staff, it shall be 58 years. Ext.R3(d) also says that since the petitioner was working as a Senior Technical Officer, his age of superannuation is 58 years and he will be superannuated from service on 31/8/06 instead of 31/8/08 indicated in Ext.P2. Following Ext.R3(d), the 2nd respondent issued Ext.P3 informing the petitioner that the age of superannuation of the Technical and Administrative Staff is 58 years and that since he was working as Senior Technical Officer, his age of superannuation is 58 years and superannuation date is 31/8/06. Thus on receipt of Ext.P3, the petitioner filed this writ petition seeking to quash Ext.P3 and to direct the respondents to permit the petitioner to remain in service as Senior Technical Officer until he attains

60 years of age.

3. At the stage of admission, this Court passed an interim order, on the basis of which petitioner was allowed to continue, but however, without receiving any monetary benefits.

4. The thrust of the averments in the counter affidavit filed by the 2nd respondent is that, with the amalgamation of the 2nd respondent in the Council on 16/1/2003, the rules that are applicable to the Council became applicable to all the employees of the amalgamated Council. According to the 2nd respondent, even after detachment of the 2nd respondent from the Council w.e.f. 12/8/03, the rules of the Council continued to govern the employees of the 2nd respondent even as on 14/7/2004, when it was re-registered as a Society. It is stated that it was on that basis that Ext.R3(c) resolution was passed clarifying that the rules and orders which were in force at

the time of re-registration of the 2nd respondent shall continue in force until specifically ordered otherwise. On this basis, it is contended that, the rule that is applicable is Ext.R3(d), and that in terms of Clause 4 thereof, the age of superannuation of Technical Officers is 58. It is on that basis that the 2nd respondent seeks to justify Ext.P3.

5. From the nature of controversy that is raised by the parties, the only issue that arises for consideration is, as to which of the Rules, namely Ext.P4 or Ext.R3(b), is applicable to the petitioner. As already noticed, Ext.P4 continued to apply to the 2nd respondent till it was amalgamated with the Council on 16/1/03. Although the 2nd respondent was detached from the Council on 12/8/03 and was re-registered as a Society on 14/7/04, it is the case of the 2nd respondent that Ext.R3(b) rules of the Council continued to govern the employees of the 2nd respondent. It is on that presumption that they passed Ext.R3(c) resolution

on 8/9/05 clarifying that the rules as applicable on 14/7/04 will continue to govern the employees of the 2nd respondent. From the above, it is quite clear that the rule that prevailed on 14/7/04 is Ext.R3(b) and that was followed by the Council. Ext.R3(b) provides that Technical Officers is to retire at 58 years. If that be so, the petitioner being a Senior Technical Officer is bound to retire at 58 years. Once it is held that 58 years is the age of superannuation of Technical Officers, the stand taken by the 2nd respondent in Ext.P3 cannot be vitiated for, on any ground. If that be so, Ext.P3 is valid and cannot be set aside.

6. The result of the discussion is that the petitioner is bound to retire at the age of 58 and the stand taken by the 2nd respondent in Ext.P3 is correct. Thus there is no merit in the contentions raised in the writ petition and it is only to be dismissed and I do so.

However, the fact remains that the petitioner has

worked for the period subsequent to 31/8/06 under orders of this Court. The fruits of his labour having been extracted by the 2nd respondent, it is only fair that he is paid salary as applicable to him. This the 2nd respondent shall do, within a period of one month from the date of receipt of a copy of this judgment.

ANTONY DOMINIC, JUDGE.

Rp